IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5522 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASANT PYARELAL SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner

MRS SIDDHI TALATI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/02/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner challenges the order of preventive detention dated 1st July, 1999 made against him by the Commissioner of Police, Vadodara City in exercise of the powers conferred upon him under sub-section 2 of Section

3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, `the Act'].

3. The grounds of detention refer to two offences punishable under Chapter-XVII of the Indian Penal Code registered against the petitioner which are pending trial before the Court. Besides, the Detaining Authority has also relied upon the statements given by three witnesses in respect of the nafarious activities carried on by the petitioner and its adverse effect on the public tranquillity. The said witnesses have made statements in connection with the incidents that occured on 1st March, 1999 and 14th March, 1999 respectively. The petitioner is, therefore, held to be a `dangerous person' within the meaning of Section 2 (c) of the Act and his activities are found to be prejudicial to the maintenance of `public order'.

4. It is contended that in respect of the offence registered against the petitioner, he was arrested and was also released on bail on 1st April, 1999. Thereafter, the statements of witnesses were recorded on 2nd May, 1999 and 6th May, 1999. The same were verified by the Detaining Authority on 30th May, 1999. Though the detaining authority had all the materials before him on 30th May, 1999, the impugned order has not been made till 1st July, 1999. The delay has not been explained in any manner. The aforesaid delay has snapped the live link between the cause of action and the impugned order. It only proves that there was no immenient danger of breach of `public order' on account of the alleged nefarious activities of the petitioner, and therefore, the powers conferred under the Act have wrongly been exercised. The impugned order, is therefore, made without the authority of law and is vitiated. It is further contended that the detaining authority could have moved the Court for cancellation of bail. Instead, without considering the possibility of such action, the detaining authority has resorted to the drastic action of preventive detention under the Act. The petitioner's right to liberty could not have been infringed without proper application of mind. The continued detention of the petitioner is, therefore, illegal and bad.

5. Learned AGP Mrs. Talati concedes that the aforesaid delay in making the order of detention has not been explained by the detaining authority nor has he considered the posibility of moving the Court for cancellation of bail. In view of the prevailing rullings, the above referred delay should defeat the order of detention. The order is also vitiated on account of

non-application of mind.

6. The petition is allowed. The impugned order dated 1st July, 1999 is quashed and set-aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

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Prakash*